

# **REVISED 29 CFR 1614 REGULATIONS**

## **SYNOPSIS SHEET**

*Effective 11/9/99, the Equal Employment Opportunity Commission's (EEOC) revised regulations regarding the processing of federal sector employment discrimination complaints are to be implemented by all federal agencies. The following information is a snapshot of the changes and their effects on the complaints processing system.*

### **' 1614.102 Alternative Dispute Resolution (ADR) [effective 1/1/00]**

- < Agencies are required to establish/make available voluntary ADR programs during the informal and formal processing phases. ADR may function as an alternative to counseling. The parties have up to 90 days for ADR to be completed. The agency determines what issues (not bases) are eligible for ADR.

### **' 1614.105 Precomplaint Processing**

- < Counselors are only required to provide aggrieved persons with their rights & responsibilities in writing.
- < Counselors are to advise aggrieved persons that they may choose either ADR or counseling activities.
- < New counselors are required to have 32 hours of training; all counselors are required to have 8 hours/year of continuing training.

### **' 1614.106 Filing Complaints**

- < The agency must acknowledge amendments to complaints in writing.
- < The agency must inform the complainant of the specific EEOC office address for forwarding a hearing request; of their right to appeal the agency's final action; & of 180-day investigation requirement, or, when an amendment is filed, that 180 days from the filing dates of the last amendment, or 360 days from original formal filing date applies, whichever is earlier.
- < The Complainant may amend a complaint with issues or claims **Alike or related** to the original complaint prior to conclusion of the investigation, or, after requesting a hearing, add issues or claims by filing a motion to amend with the Administrative Judge (AJ). No additional counseling is required.
- < Where a complainant raises a claim of retaliation, or **Terms & conditions of employment**, subsequent events or instances involving the same claim should be treated as part of the first claim.

### **' 1614.107 Dismissals**

- < New bases for dismissal: (1) Spin-off complaints (which allege dissatisfaction with the processing of previously filed complaints); & (2) abuse of EEO process.
- < The agency's ability to dismiss complaints for failure to accept certified offers of full relief has been removed.
- < Partial dismissals with immediate appeal rights are no longer available; where a complaint has multiple issues, the agency must document the file with reasons for a partial dismissal, investigate the remaining issues, & either issue a final agency decision (FAD) on all claims, or, the AJ issues a decision on dismissed claims at hearing; the complainant can appeal to EEOC in either case.

## **' 1614.108 Investigations**

- < The agency is to give the complainant a copy of the Report of Investigation (ROI) with notification of their right to request either a hearing & decision from an EEOC AJ, or a FAD on the record.
- < The complainant must make written requests for a hearing directly to EEOC with a copy sent to the agency.
- < The agency must send a copy of the ROI to EEOC within 15 days of receipt of a copy of the hearing request. If a request for a hearing is received by the agency without submission having been made to EEOC, the agency is to forward the ROI & request to EEOC & notify the complainant of same, & that requests are to be sent directly to EEOC.
- < The agency & the complainant may voluntarily extend the investigation time frame by written agreement for no more than an additional 90 days.

## **' 1614.109 Hearings**

- < The agency may make offers of resolution to complainants represented by an attorney anytime after a complaint is filed formal, but no later than the date the AJ is appointed for the hearing.
- < The agency may make offers of resolution anytime after the parties receive notice that the AJ has been appointed, but no later than 30 days prior to the hearing, whether or not the complainant is represented.
- < The agency resolution offers must be written & note the consequences of failure to accept the offer; the complainant has 30 days from receipt of the offer to accept. If the complainant fails to accept, & relief later awarded is less favorable, the attorney fees & costs incurred after the 30-day acceptance period expired will not be paid.
- < Acceptance must be written & postmarked within the 30-day acceptance period.
- < Other offers may be made, & either party may seek negotiated settlement at any time.
- < The AJ makes the decision, & where discrimination is found, orders remedies & relief, within 180 days of receipt of the file from the agency.
- < The AJ can no longer remand complaints to the agency, & is responsible for processing the case; the AJ can dismiss a complaint pursuant to ' 1614.107 as circumstances require.

### **' 1614.110 Final Agency Action**

- < The agency must issue a FAD within 60 days of receipt of a request for an immediate decision, or, if no response is received from the complainant, by end of the 30-day request period, or if complainant has done neither; the FAD must address all claims & rationale for any dismissal &/or findings on the merits.
- < The agency must issue a final order in 40 days of receipt of the hearing file & the AJ's decision.
- < If the agency will not fully implement the AJ's decision, the agency must simultaneously file an appeal with EEOC; the agency has 20 additional days to file a brief.

### **' 1614.401-409 Appeals**

- < The Complainant has 30 days from receipt of the agency dismissal or final action to file an appeal.
- < The agency has 40 days from receipt, where not fully implementing the AJ's decision, to file an appeal & simultaneously issue a final order.
- < Within 30 days (for the complainant) or 20 days (for the agency) of filing a notice of appeal, a statement or brief in support of the appeal can be filed. The Office of Federal Operations (OFO) will accept statements or briefs by fax if 10 pages or less.
- < If either party fails to comply with appellate requirements in ' 1614, OFO will draw an adverse inference, consider the matter in favor of opposition, issue a full or partial decision in favor of the opposition, or take other appropriate action.
- < Within 30 days of appeal notification or 30 days of the agency appeal submission, the agency is to submit the complaint file to OFO.
- < Opposition briefs must be served on opposing parties within 30 days of receipt of the brief in support of the appeal, or if no brief has been filed, within 60 days of receipt of the appeal.
- < Standard of Review: now the AJ uses *substantial evidence* vs *de novo*.
- < Reconsideration: EEOC has the discretion to grant a request only where the appellate decision involved clearly erroneous interpretation of material fact or law, or the appellate decision will have a substantial impact on the policies, practices or operations of the agency.

### **' 1614.501 & 505 Remedies & Relief**

- < The AJ now makes a determination on the payment & amount of attorney's fees.
- < Attorney's fees during Informal Processing - the agency is not required to pay unless a hearing is requested, the AJ issues a cause finding, the agency issues a final order disagreeing & appeals, & EEOC upholds the AJ's cause finding on appeal.
- < The agency is required to provide the complainant with interim relief during pendency of the agency appeal in limited circumstances.

## **1614.606 Consolidation**

- The agency is required to consolidate 2 or more complaints filed by the same complainant.
- The agency is to complete the investigation within 180 days of the date of the complaint or the date the last amendment was filed, or within 360 days of the date the original complaint was filed, whichever is earlier.
- The complainant can request a hearing from the AJ on consolidated complaints anytime after 180 days from the date the first complaint was filed formal.

## **' 1614.204 Class Complaints**

- A class complainant may now move for class certification at any reasonable point in the process.
- Individual class members may opt out of the defined class.
- AJ decisions regarding class certification will be treated as other AJ decisions.
- AJs will review class settlements under the same fair and reasonable standard used by federal judges.
- Burden of Proof for individual claims of relief - where there is a finding of discrimination, there is a presumption of discrimination as to every individual; agencies must prove by clear & convincing evidence otherwise.

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